IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6433 of 2006
Date of Decision: 22.5.2007

M/s Ridhima Overseas Pvt. Ltd.

Petitioner

versus

Presiding Officer and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Aseem Rai, Advocate for the petitioner
Ms.Mamta Singal Talwar, AAG Haryana for respondent No.1
Shri Ashok Tyagi, Advocate for respondent No.2

Jasbir Singh, J. (Oral)

This writ petition has been filed against an ex-parte award dated 11.5.2004 (Annexure P/1) and also against order dated 27.3.2006 (Annexure P/3), vide which, application to set aside ex-parte award, was dismissed.

It is apparent from the records that to lay challenge to his termination, respondent No.2 sought reference of dispute, to the Labour Court. Matter was accordingly referred by the appropriate government to the Industrial Tribunal-cum-Labour Court, Gurgaon, for adjudication. When upon notice, the petitioner management failed to put in appearance, it was ordered to be proceeded ex-parte on 15.10.2003. Subsequent thereto, after recording evidence of respondent-workman, award, under challenge, was passed, ordering reinstatement of respondent No.2 and payment of 50% of back wages to him. The petitioner-management when came to know about the award passed, moved an application for setting aside the award, under challenge. Industrial Tribunal dismissed that application vide order

dated 27.3.2006 on the ground that after publication of the award, it has become functus officio. Hence, this writ petition.

It is apparent from the records that the petitioner-management was sought to be served by the Tribunal through registered letter for 15.10.2003. That letter was received back with a report of refusal. It is also apparent from the records that to prove that the letter was actually tendered to the petitioner-management and it was refused, the concerned postman was not produced in the witness box. The very fact that after coming to know of passing of the award, the petitioner-management immediately moved an application, to set aside the same, clearly establishes that the petitioner was not served when the matter was pending before the Industrial Tribunal. The management has seriously disputed the averments made by the respondent-workman for his reinstatement. We feel that it is a case where the dispute is required to be decided on merits.

Rules and procedure are handmaid of justice to enhance the same and not to subvert it.

Their Lordships of Supreme Court in Sardar Amarjit Singh Kalra (dead) by L.Rs. And others v. Parmod Gupta (Smt.) dead) by L.Rs. And others (2003) 3 S.C.C. 272, in para 26 of the judgment had opined as under:-

> *"Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. "*

View extracted above, was reiterated by their Lordships of Supreme Court in N.Balajit v. Virendra Singh and others, (2004) 8 Supreme Court Cases 312, wherein after noting ratio of the judgment, referred to above, in para 10 of the judgment, it was observed that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice.

In view of ratio of judgments, mentioned above and facts of this case, the writ petition is allowed, orders, under challenge, are set aside and the matter is remitted to the Industrial Tribunal-cum-Labour Court, Gurgaon, to decide it afresh on merits. Order passed is subject to payment of Rs.10,000/- as costs, by the petitioner-management to the respondent-workman. Awarded amount be paid on the first date of hearing before the Tribunal.

Parties are directed to appear before the Tribunal on 18.6.2007.

(Jasbir Singh)
Judge

May 22, 2007
gk

(Nirmal Yadav)
Judge